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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/739,731	12/18/2000	John Zaharychuk	3239P089	5077
8791	7590	06/14/2005	EXAMINER	
BLAKELY SOKOLOFF TAYLOR & ZAFMAN 12400 WILSHIRE BOULEVARD SEVENTH FLOOR LOS ANGELES, CA 90025-1030			BLOUNT, STEVEN	
			ART UNIT	PAPER NUMBER
			2661	

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	09/739,731		ZAHARYCHUK ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Steven Blount		2661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 2/7/2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                         |                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                             | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____                                                |

**Continuation of Disposition of Claims:** Claims pending in the application are 1 - 3, 8 - 10, 11 - 13, 18 - 19, 20 - 22, 27 - 28, 29 - 34, 35 - 40, 41 - 47, and 48 - 49.

**Continuation of Disposition of Claims:** Claims rejected are 1 - 3, 8 - 10, 11 - 13, 18 - 19, 20 - 22, 27 - 28, 29 - 34, 35 - 40, 41 - 47, and 48 - 49..

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 9 – 13, 19 – 22, 28, 29, 30, 33 – 35, 37 – 38, 40 – 41, 43 – 44, and 46 – 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent 6,141,686 to Jackowski et al in view of U.S. patent 6,708,187 to Shanumgam et al.

With regard to claim 1, Jackowski et al teaches an access device comprising:

1) an analyzer – edge device 14: see col 2, line 60 (it “examine(s) packets and appl(ies) policy rules to determine which packets to accelerate and which to delay”)

2) an optimizer – policy server 18, which “sends the policy rules to edge device 13” (col 2, line 65. With regard to the optimizer generating optimized system parameters in response to changing mixtures of different data types, see col 3 lines 3+.

The interaction between the analyzer and the optimizer to dynamically respond to changing mixtures of different traffic types is taught in column 2, lines 65+:

“Policy server 18 sends the policy rules to edge device 14. Bandwidth information is sent back from edge device 14 to policy server 18. This bandwidth information might indicate the current bandwidth available to internet 20 or local network 15, or other load statistics such as the kinds of packet appearing. The bandwidth information may be used by policy server 18 to re-prioritize packets passing through edge device 14 by adjusting the policy rules sent to edge device 14. For example, when edge device 14

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detects video conferencing packets passing through, policy server 18 can reduce the bandwidth allocated to other kinds of packets to reserve additional network bandwidth for videoconferencing packets.”

Jackowski et al does not, however, explicitly teach the access device to comprise a CPU and memory, or an optimizing database that includes optimized system parameters for different mixtures of data traffic types to achieve a desired goal.

Shanumgam et al teach in col 16 lines 53+ a policy enforcer that includes a statistics module 512 that logs statistics on the packets and maintains a cache in a state table for each connection. In col 17, lines 3+, it is stated that this information is forwarded to policy server 122, wherein it is stated in col 7 lines 63+ that this information is used to set bandwidth and administrator policies. Shanmgam et al also teach a cpu (fig 3, member 302) and memory (fig 3, member 318). Note that Shanumgam also teaches optimizier 122 may be used to set bandwidth and administration policies, wherein the memory allocation, and message size are related to the bandwidth allocation, and scheduling priority is related to an administration policy.

It would have been obvious to one of ordinary skill in the art at the time of the invention to have provided Jackowski et al with a cpu/memory and a optimizing databse with optimized system parameters, in light of the teachings of Shanumgam et al, in order to provide a method for processing network data in an optimized fashion.

With regard to the following claims (hereinafter referred to as “CI”, see the following: CI 9: TCP is mentioned in col 6 line 60; CI 10: in col 2, lines 59+, it is stated that “Edge device 14 is able to block or delay packets to and from Internet 20”; in

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addition to being able to filter messages which occur in a simplex manner, it is noted that having more than one analyzer to perform this function (as having it done in one unit, as in Jackowski et al) is an obvious variation;

With regard to claims 11 – 13 and 19, see the rejections above.

With regard to claims 20 – 22 and 28, see the rejections above, and note that processes such as those described in Jackowski/Shanumgam et al (including the storage of policy statements in Jackowski) are typically implemented in software. With regard to claim 29, see the rejection of claim 1. With regard to claim 30, see the rejection of claim 2. With regard to claims 33 – 35, 37 – 38, and 40, see the rejections above. With regard to claims 41, 43 – 44, and 46 – 49, note the rejections above, and the fact that it would be obvious to implement the invention of Jackowski et al/Shanumgam et al in software in order to permit the operation to be repeatable.

3. Claims 2 – 3 and 31 – 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent 6,141,686 to Jackowski et al in view of U.S. patent 6,708,187 to Shanumgam et al as applied above, and further in view of U.S. patent 5,627,819 to Dev et al.

With regard to claim 2, Jackowski et al/Shanumgam et al teach the invention as described above, but do not teach the use of data taps. These are taught in Dev et al. It would have been obvious to one of ordinary skill in the art at the time of the invention to have used data taps to acquire information about the data types in Jackowski/Shanumgam et al, in light of the teachings of Dev et al, in order to provide an efficient means of data acquisition for the analyzer.

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With regard to claim 3, the analyzer (edge device 14) must have a processing unit so that it can operate as described in col 2 lines 60+ of Jackowski et al.

With regard to claims 31 – 32, see the discussion of claims 2 – 3.

4. Claims 8, 18, 27, 36, 39, 42, and 45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form to include the limitations of the base claims and any intervening claims.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Blount whose telephone number is 571 - 272 - 3071. The examiner can normally be reached on M-F 9:00 - 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Chau Nguyen, can be reached on 571 – 272 - 3126. The fax phone


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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Ajit Patel  
Primary Examiner

SB

  
6/9/05